

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WALTER F. HAGEMAN,)	
)	No. CV-09-095-CI
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	AND GRANTING DEFENDANT'S
MICHAEL J. ASTRUE, Commissioner)	MOTION FOR SUMMARY JUDGMENT
of Social Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct. Rec. 13, 15.) Attorney Maureen J. Rosette represents Walter F. Hageman (Plaintiff); Special Assistant United States Attorney David J. Burdett represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

JURISDICTION

Plaintiff protectively filed for disability insurance benefits (DIB) under Title II of the Social Security Act, 42 U.S.C. §401-34, on December 3, 2004, (Tr. 13) and filed for Supplemental Security Income (SSI) on December 1, 2004. (Tr. 384.) He alleged disability

1 due to tendonitis, rotator cuff tear, severe degenerative joint
2 disease of the right hand, gastrointestinal reflux disease, high
3 blood pressure, poor vision, depression and narcolepsy. (Tr 65.)
4 He alleged an onset date of June 1, 2001, in his DIB application.
5 (Tr. 61.) His claim was denied initially and on reconsideration.
6 Plaintiff requested a hearing before an administrative law judge
7 (ALJ), which was held on November 7, 2006, before ALJ John R.
8 Crickman. (Tr. 407-55.) Plaintiff, who was represented by counsel,
9 testified. Mrs. Hageman, Plaintiff's spouse, and vocational expert
10 Tom L. Moreland (VE) also testified. (Tr. 403.) On February 23,
11 2007, the ALJ denied DIB benefits, but determined Plaintiff was
12 eligible for SSI as of December 1, 2004, through the date of the
13 decision. Plaintiff requested review regarding the DIB
14 determination, and the Appeals Council denied review. (Tr. 13-19,
15 400, 5-8.) The instant matter is before this court pursuant to 42
16 U.S.C. § 405(g).

17 STATEMENT OF THE CASE

18 The facts of the case are set forth in detail in the transcript
19 of proceedings, and are briefly summarized here. At the time of the
20 hearing, Plaintiff was 57 years old. (Tr. 420.) He has a high
21 school education and one year of college. (*Id.*) Plaintiff was
22 married and lived with his spouse and eight-year-old granddaughter.
23 (Tr. 422.) He testified his spouse and granddaughter do most of the
24 household chores, and he could do small jobs for short periods of
25 time. (Tr. 422-23.) Plaintiff has past work experience as an auto
26 mechanic, dishwasher, house painter, pesticide operator and
27 electrician's helper. (Tr. 433-36, 444-46.) He testified he is
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1 unable to grip with either hand, or sustain work due to his
2 degenerative joint disease, post-surgery problems, and attendant
3 pain.

4 **ADMINISTRATIVE DECISION**

5 ALJ Crickman first found Plaintiff met the insured status
6 requirements under Title II of the Social Security Act for DIB and
7 was insured through March 31, 2002. (Tr. 13, 15.) He then found
8 the medical records relevant to the Title II insured status period
9 did not establish disability prior to March 31, 2002, and Plaintiff
10 therefore was not entitled to DIB. (Tr. 13.) He then conducted a
11 formal sequential evaluation to determine if Plaintiff was eligible
12 for SSI. (Tr. 15-18.) At step one, the ALJ found Plaintiff had not
13 engaged in substantial gainful activity since December 1, 2004, the
14 date of application for SSI. (Tr. 15.) At step two, he found that
15 beginning December 1, 2004, Plaintiff had severe impairments of
16 osteoarthritis in the right hand post two surgeries and degenerative
17 joint disease of the right shoulder post surgery. (*Id.*) He found
18 the evidence did not support a finding of a severe mental
19 impairment. (Tr. 17.) At step three, ALJ Crickman determined the
20 severe impairments did not meet or medically equal one of the listed
21 impairments in the Social Security regulations at 20 C.F.R. Part
22 404, Subpart P, Appendix 1 (Listings). (Tr. 16.) He found
23 Plaintiff generally credible and, as of December 1, 2004, capable of
24 light exertion and sedentary work with limitations in his ability to
25 reach in all directions with his right arm and less than occasional
26 use of his right hand for handling and fingering. (*Id.*) At step
27 four, the ALJ found Plaintiff could not perform past relevant work
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1 and did not possess skills transferable to other work within his
2 residual functional capacity (RFC). (Tr. 17.) Proceeding to step
3 five and considering VE testimony and the Medical Vocational
4 Guidelines (20 C.F.R. Part 404, Subpart P, Appendix 2), the ALJ
5 determined Plaintiff was disabled and eligible for SSI as of
6 December 1, 2004, through the date of his decision, but Plaintiff
7 was not under a disability at any time through March 31, 2002,
8 Plaintiff's date of last insured for DIB purposes.

9 STANDARD OF REVIEW

10 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
11 court set out the standard of review:

12 A district court's order upholding the Commissioner's
13 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,
14 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
15 Commissioner may be reversed only if it is not supported
16 by substantial evidence or if it is based on legal error.
17 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
18 Substantial evidence is defined as being more than a mere
19 scintilla, but less than a preponderance. *Id.* at 1098.
20 Put another way, substantial evidence is such relevant
21 evidence as a reasonable mind might accept as adequate to
22 support a conclusion. *Richardson v. Perales*, 402 U.S.
23 389, 401 (1971). If the evidence is susceptible to more
24 than one rational interpretation, the court may not
25 substitute its judgment for that of the Commissioner.
26 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*
27 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

28 The ALJ is responsible for determining credibility,
resolving conflicts in medical testimony, and resolving
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
Cir. 1995). The ALJ's determinations of law are reviewed
de novo, although deference is owed to a reasonable
construction of the applicable statutes. *McNatt v. Apfel*,
201 F.3d 1084, 1087 (9th Cir. 2000).

25 SEQUENTIAL PROCESS

26 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the
27 requirements necessary to establish disability:

1 Under the Social Security Act, individuals who are
2 "under a disability" are eligible to receive benefits. 42
3 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any
4 medically determinable physical or mental impairment"
5 which prevents one from engaging "in any substantial
6 gainful activity" and is expected to result in death or
7 last "for a continuous period of not less than 12 months."
8 42 U.S.C. § 423(d)(1)(A). Such an impairment must result
9 from "anatomical, physiological, or psychological
10 abnormalities which are demonstrable by medically
11 acceptable clinical and laboratory diagnostic techniques."
12 42 U.S.C. § 423(d)(3). The Act also provides that a
13 claimant will be eligible for benefits only if his
14 impairments "are of such severity that he is not only
15 unable to do his previous work but cannot, considering his
16 age, education and work experience, engage in any other
17 kind of substantial gainful work which exists in the
18 national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus,
19 the definition of disability consists of both medical and
20 vocational components.

21 In evaluating whether a claimant suffers from a
22 disability, an ALJ must apply a five-step sequential
23 inquiry addressing both components of the definition,
24 until a question is answered affirmatively or negatively
25 in such a way that an ultimate determination can be made.
26 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The
27 claimant bears the burden of proving that [s]he is
28 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.
1999). This requires the presentation of "complete and
detailed objective medical reports of h[is] condition from
licensed medical professionals." *Id.* (citing 20 C.F.R. §§
404.1512(a)-(b), 404.1513(d)).

It is the role of the trier of fact, not this court, to resolve
conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
supports more than one rational interpretation, the court may not
substitute its judgment for that of the Commissioner. *Tackett*, 180
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
Nevertheless, a decision supported by substantial evidence will
still be set aside if the proper legal standards were not applied in
weighing the evidence and making the decision. *Browner v. Secretary
of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If
there is substantial evidence to support the administrative

1 findings, or if there is conflicting evidence that will support a
2 finding of either disability or non-disability, the finding of the
3 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-
4 1230 (9th Cir. 1987).

5 **ISSUES**

6 The question on review is whether the ALJ's decision is
7 supported by substantial evidence and free of legal error. The sole
8 issue is whether the ALJ erred in finding Plaintiff ineligible for
9 DIB between June 1, 2001, the alleged onset date, and March 31,
10 2002, Plaintiff's date of last insured for DIB purposes. Plaintiff
11 argues the ALJ erred when he failed to conduct a proper sequential
12 evaluation and make findings relating to the period before December
13 1, 2004. He also claims (1) the ALJ failed to properly reject the
14 December 7, 2006, opinion letter from his treating physician, and
15 (2) the ALJ improperly disregarded Plaintiff's testimony. (Ct. Rec.
16 14 at 12-13.)

17 **DISCUSSION**

18 During disability proceedings, the burden of proof in steps one
19 through four of the sequential evaluation process is on the claimant
20 to show he is disabled. At step one, the claimant must establish
21 that he has not had substantial gainful employment as of his alleged
22 onset date of disability. At step two, he has the burden to present
23 evidence sufficient to establish a "severe" impairment, *i.e.*, one
24 that significantly limits his physical or mental ability to do basic
25 work activities. 20 C.F.R. § 404.1520 (b) and (c). If the claimant
26 does not have a severe impairment or combination of impairments, the
27 disability claim is denied and the sequential evaluation process is
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1 ended. *Ukolov v. Barnhart*, 420 F.3d 1002, 1005-06 (9th Cir. 2002).

2 To satisfy step two's requirement of a severe impairment, the
3 claimant must prove the existence of a physical or mental impairment
4 by providing medical evidence consisting of signs, symptoms, and
5 laboratory findings; the claimant's own statement of symptoms alone
6 will not suffice. 20 C.F.R. §§ 404.1508, .1528.

7 For purposes of step two, an impairment must result from
8 "anatomical, physiological or psychological abnormalities" which can
9 be shown by "medically acceptable clinical and laboratory diagnostic
10 techniques." 20 C.F.R. § 404.1528. However, the fact that a
11 medically determinable condition exists does not automatically mean
12 the symptoms are "severe" or "disabling," as defined by the Social
13 Security Regulations (Regulations). *See, e.g., Edlund*, 253 F.3d at
14 1159-60; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Key v.*
15 *Heckler*, 754 F.2d 1545, 1549-50 (9th Cir. 1985). Significantly, the
16 Regulations provide a claimant must present evidence that his severe
17 impairment will result in death or meets the "duration requirement,"
18 that is, it is expected to last for a continuous period of at least
19 twelve months. 20 C.F.R. §§ 404.1520(a)(4)(ii), 404.1509. Thus, if
20 the Commissioner finds the claimant does not have a severe medically
21 determinable physical or mental impairment that meets the duration
22 requirement, a finding of "not disabled" is warranted at step two,
23 and the sequential evaluation is ended. 20 C.F.R. § 404.1520(c).

24 The Commissioner has passed regulations which guide dismissal
25 of claims at step two. Those regulations state an impairment may be
26 found to be not severe when "medical evidence establishes only a
27 slight abnormality or a combination of slight abnormalities which
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1 would have no more than a minimal effect on an individual's ability
2 to work." *Social Security Ruling (SSR)* 85-28.¹ "Medical evidence
3 alone is evaluated in order to assess the effects of the impairments
4 on ability to do basic work activities." *Id.* Thus, in determining
5 whether a claimant has a severe impairment, the ALJ evaluates the
6 medical evidence submitted and must explain the weight given to the
7 opinions of accepted medical sources in the record.

8 Here, prior to addressing Plaintiff's SSI claim, ALJ Crickman
9 found as follows:

10 The undersigned finds the medical records do not establish
11 the claimant was disabled prior to March 31, 2002
12 [Plaintiff's date of last insured for DIB]. Therefore, in
13 accordance with a finding that the claimant was not
14 disabled prior to March 31, 2002, the claimant is not
eligible or entitled to a period of disability and
Disability Insurance Benefits under Title II, sections
216(I) and 223, respectively, of the Social Security Act.

15 (Tr. 13.)

16 The record shows the ALJ's denial of Plaintiff's DIB
17 application is supported by substantial evidence. Plaintiff did not
18 present evidence of a medically determinable impairment that would
19 have a significant effect on his ability to work between June 1,

21 ¹ Social Security Rulings are issued to clarify the
22 Commissioner's regulations and policy. They are not published in
23 the federal register and do not have the force of law. However, the
24 court is required to give deference to the Commissioner's
25 interpretation of the Regulations. *Bunnell v. Sullivan*, 947 F.2d
26 341, 346 n.3 (9th Cir. 1991). The Supreme Court upheld the validity
27 of the Commissioner's severity regulation, as clarified in *SSR* 85-
28 28, in *Bowen v. Yuckert*, 482 U.S. 137, 153-154 (1987).

1 2001, and March 31, 2002. The only submissions relevant to that
2 period are: medical records from Family Eye Care of Republic
3 documenting routine eye care with reports of good vision and
4 successful fitting for contact lenses (Tr. 284-95); emergency room
5 reports dated March 30, 2000, and July 25, 2000, from Ferry County
6 Memorial Hospital relating to a knee injury when Plaintiff stepped
7 on a board with a nail, and dizziness secondary to heat exhaustion
8 on the job, for which he was advised to rest, consume liquids and
9 avoid excessive work under the sun (Tr. 331-42); and a clinic note
10 from Republic Medical Clinic dated December 12, 2001, concerning
11 Plaintiff's resolving bronchitis (Tr. 355-56). Plaintiff does not
12 reference contemporaneous medical evidence to establish that any of
13 these problems lasted or were expected to last the 12 months to meet
14 the durational requirement. In addition, it is noted on independent
15 review of the record that in his November 2004 disability report,
16 Plaintiff stated he became unable to work due to his medical
17 problems in August 2004. (Tr. 65.)

18 The ALJ did not err in concluding that medical evidence does
19 not establish Plaintiff was disabled prior to March 31, 2002. (Tr.
20 13.) Without any medical evidence of a severe impairment to
21 evaluate, reject or accept, the ALJ could not and is not required to
22 conduct a full sequential evaluation. *Ukolov*, 420 F.3d at 1005.
23 Further, in reviewing the Commissioner's findings, the court may
24 draw inferences from the ALJ's summary of the evidence and findings.
25 *Magallanes v. Bowen*, 881 F.2d. 747, 755 (9th Cir. 1989). Because of
26 the dearth of objective medical evidence relating to the insured
27 status period for DIB purposes, it can be inferred from the ALJ's
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1 findings that Plaintiff did not meet his burden at step two, *i.e.*,
2 he did not present objective medical evidence of severe impairments
3 that lasted or were expected to last more than 12 months. 20 C.F.R.
4 §§ 404.1508, .1509. The ALJ, therefore, was not required to
5 continue with the sequential evaluation.

6 The fact that the ALJ did not formally identify steps one and
7 two in his consideration of Plaintiff's DIB application does not
8 render his Title II determination fatally erroneous. Even assuming
9 the ALJ's limited findings concerning Plaintiff's DIB application
10 were legal error, the error is harmless because remand for
11 additional evaluation and findings based on medical records related
12 to the DIB period would not alter the ALJ's decision. *See Johnson*
13 *v. Shalala*, 60 F.3d 1428, 1436 n.9 (9th Cir. 1995). Because
14 Plaintiff has not met his burden of providing objective medical
15 evidence to establish the existence of a severe impairment during
16 his insured status period, Plaintiff is not entitled to Title II
17 benefits.

18 Plaintiff also asserts the ALJ erred when he failed to make
19 credibility findings "prior to December 1, 2004." (Ct. Rec. 14 at
20 14.) He appears to argue the ALJ should have made explicit
21 credibility findings when considering Plaintiff's DIB claim.
22 Plaintiff's argument is inapposite, as his statements alone are
23 insufficient to entitle him to Title II benefits. The consideration
24 of the DIB claim ended when the ALJ properly determined there was no
25 evidence of a "severe impairment," as defined by the Regulations,
26 during Plaintiff's insured status period. *Ukolov*, 420 F.3d at 1005.
27 When determining whether a claimant has a severe impairment,

1 objective medical evidence in the form of medically acceptable
2 clinical diagnostic techniques is considered; credibility bears on
3 the evaluation of medical evidence only to the extent there is a
4 conflict between medical opinions or between a medical diagnosis and
5 claimant's subjective complaints. *Webb v. Barnhart*, 433 F.3d 683,
6 688 (9th Cir. 2005); SSR 96-4p. "Under no circumstances may the
7 existence of an impairment be established on the basis of symptoms
8 alone." SSR 96-4p; see also 20 C.F.R. §§ 404.1508, 416.908.

9 As discussed above, Plaintiff did not provide sufficient
10 medical evidence to establish a medically determinable severe
11 impairment between June 1, 2001, and March 31, 2002. Although
12 Plaintiff references testimony about his limitations at the time of
13 the hearing, (Ct. Rec. 14 at 13), he does not specify how
14 Plaintiff's credibility, or lack thereof, would bear on the
15 evaluation of medical evidence relevant to the 2001-2002 DIB insured
16 status period. The ALJ did not err in his consideration of
17 Plaintiff's testimony.

18 Plaintiff appears to argue the ALJ should have found him
19 disabled for DIB purposes based on a December 7, 2006, opinion
20 letter from his treating physician, Giannantonio Giuliani, M.D. In
21 that letter, Dr. Giuliani stated Plaintiff had a "very stormy
22 course" with his hand, thumb and shoulder problems in early 2000.
23 (Tr. 382.) Plaintiff claims the ALJ did not properly reject this
24 treating physician opinion. (Ct. Rec. 14 at 13-14.) This argument
25 fails because the ALJ specifically addressed this opinion and
26 rejected Dr. Guiliani's assessment of Plaintiff's condition in 2000,
27 finding "there is no objective medical documentation to support
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1 these statements." (Tr. 16.)

2 If the treating physician's opinions are not contradicted, they
3 can be rejected by the decision-maker only with "clear and
4 convincing" reasons. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
5 1995). If contradicted, the ALJ may reject the opinion with
6 specific, legitimate reasons that are supported by substantial
7 evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44 F.3d
8 1453, 1463 (9th Cir. 1995). Nonetheless, an ALJ is not obliged to
9 accept the opinions from treating physicians whose opinions are
10 "brief, conclusory, and inadequately supported by clinical
11 findings." *Magallanes*, 881 F.2d at 751.

12 Here, the ALJ did not err in his rejection of Dr. Guiliani's
13 statement relating to Plaintiff's condition in early 2000. As
14 discussed above, there is no objective medical evidence to establish
15 a severe impairment meeting the duration requirement between June 1,
16 2001, and March 3, 2002. Dr. Giuliani's 2006 letter regarding
17 Plaintiff's condition in early 2000 is not supported by
18 contemporaneous objective medical tests and reports or clinic notes.
19 The ALJ articulated a legally sufficient reason to reject Dr.
20 Guiliani's conclusory statement relating to Plaintiff's medical
21 condition in 2000. *Ukolov*, 420 F.3d at 1005-06; *Lester*, 81 F.3d at
22 830; *Andrews*, 53 F.3d at 1043; *Magallanes*, 881 F.2d at 751.

23 Having failed to establish a disability during his insured
24 status period for DIB purposes, Plaintiff is eligible only for SSI
25 benefits, which are calculated based on his SSI application date.
26 20 C.F.R. § 416.335. Therefore, the ALJ properly assessed the
27 evidence to determine whether Plaintiff was disabled as of December
28 1, 2004. (Tr. 18, 384-87.) Based on the objective medical evidence

1 in the record, Plaintiff's credible statements, and the VE's
2 testimony, the ALJ properly found Plaintiff was disabled and
3 eligible for SSI. Accordingly,

4 **IT IS ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is
6 **DENIED;**

7 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 15**) is
8 **GRANTED;**

9 The District Court Executive is directed to file this Order and
10 provide a copy to counsel for Plaintiff and Defendant. The file
11 shall be closed and judgment entered for Defendant.

12 DATED April 27, 2010.

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14 S/ CYNTHIA IMBROGNO
15 UNITED STATES MAGISTRATE JUDGE
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